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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ALFRED T. THOMAS,

No. C 09-02764 WHA

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Plaintiff,

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v.

ORDER OF DISMISSAL

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AIDA CORREA,

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Defendant.

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Plaintiff, acting *pro se*, has filed two documents in this district, a “petition & motion of respondent No. 2 for removal to U.S. District Court,” and a “Petition for Writ of Habeas Corpus.” The Clerk docketed both filings under this case number and identified the latter document as a civil-rights complaint rather than a habeas petition, since it appears to assert civil-rights violations rather than challenge any confinement. Although the documents are difficult to comprehend, both appear to challenge an order issued by the North Carolina Superior Court in a dispute regarding custody of a minor child.

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Plaintiff had previously opened a similar case in this district, and that prior case was assigned to Magistrate Judge Chen. *See* C. 09-1487 (EMC). The document herein titled “petition & motion . . . for removal” names the same defendant and is virtually (if not precisely) identical to Case No. 09-1487. The filing herein titled a habeas petition (which was docketed as a civil-rights compliant) also names the same defendant and concerns the same dispute as Case No. 09-1487.

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Judge Chen dismissed the notice of removal in Case No. 09-1487 without prejudice. The order of dismissal explained that, if the filing was a notice of removal from state court, it was improper because plaintiff has no right of removal and that, in all respects, subject-matter

1 jurisdiction was likely lacking because plaintiff sought relief from an order of a North Carolina
2 state court. Plaintiff evidently submitted the instant filings instead of an amended complaint,
3 and the filings were docketed as a new case and assigned to the undersigned. The filings,
4 however, appear to be plaintiff's attempt at amendment in C. 09-1487, although they were not
5 labeled as such. The filings herein should have been docketed in C. 09-1487 and not as a new
6 case. The Clerk should re-file Dkt. Nos. 1–2 herein in Case No. 09-1487 (EMC) and close the
7 instant case.

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9 **IT IS SO ORDERED.**

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11 Dated: July 7, 2009.

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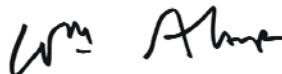
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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE